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DECLARATION OF CONDOMINIUM
OF
BRIERCLIFF COMMONS CONDOMINIUM

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Declaration of Condominium is made by SJK. Blue Star Holdings, Inc., hereinafter referred to as "Developer," as owner of the property designated as Briercliff Commons Condominium, hereby declares the purpose of the Declaration to submit the lands described in this instrument and improvements on those lands to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, as may be amended. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit or any other interest in the condominium property, or the lease, occupancy, or use of any portion of a unit or the condominium property, constitutes an acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms.

2. NAME: The name of this Condominium is: Briercliff Commons Condominium

3. DESCRIPTION OF CONDOMINIUM PROPERTY: The land submitted to the condominium form of ownership by this Declaration (hereinafter 'Land') is legally described in Exhibit "A" attached to this Declaration, which Exhibit is hereby incorporated by reference.

4. DEFINITIONS: The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act") unless the context otherwise requires.

4.1 "**Apartment**" has the same meaning as the term "unit" as defined in the Condominium Act.

4.2 "**Apartment Owner**" or "**Owner**" has the same meaning as the term "unit owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.

4.3 "**Assessment**" means a share of the funds required for the payment

of common expenses which from time to time is assessed against the units.

4.4 **"Association"** means Briercliff Commons Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5 **"Association Property"** means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.6 **"Board of Directors"** or **"Board"** means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration."

4.7 **"Condominium Documents"** means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.8 **"Developer"** means SJK. Blue Star Holdings, Inc., or its successors and assigns.

4.9 **"Family"** or **"Single Family"** shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage, civil union or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.10 **"Fixtures"** means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.11 **"Guest"** means any person who is not the unit owner or a lessee or a

member of the owners or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.12 **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.13 **"Lease"** means the grant by a unit owner of a temporary right of use of the owners unit for valuable consideration.

4.14 **"Limited Common Elements"** means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.15 **"Occupy,"** when used in connection with a unit, means the act of staying overnight in a unit. 'Occupant' is a person who occupies a unit.

4.16 **"Primary Institutional Mortgagee"** means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.17 **"Primary Occupant"** means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.18 **"Rules and Regulations"** means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

4.19 **"Surface Water or Stormwater Management System"** means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity of discharges.

4.20 **"Voting Interest"** means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are 5 units, so the total number of voting interests is 5 votes.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

5.1 **Survey and Plot Plans.** Attached to this Declaration as Exhibits "B" and "C", and incorporated by reference herein, are a survey of the land and plot plans, which graphically describe the Improvements in which units are located, and which show all the units, including their identification names, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimension.

5.2 **Unit Boundaries.** Each unit shall include that part of the building that lies within the following boundaries:

(A) **Horizontal Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical boundaries:

1. **Upper Boundaries :**

a) The horizontal plane of the finished surface of the interior ceiling of the unit.

2. **Lower Boundaries:**

(a) The horizontal plane of the under surface of the concrete floor slab of the Unit.

(B). Vertical Boundaries. The vertical boundaries of the unit shall be:

1. The vertical planes of the decorated, finished, interior perimeter walls bounding the Unit.

(C) Balconies. The area designated as balconies on the Exhibits attached hereto.

(D) Roof top decks. The rear of each unit contains a flat roof/sundeck. This area shall be part of each unit and maintained by the owner.

6.CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium contains five (5) units. The owner of each unit shall also own a 1/5th undivided share in the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The owner of each unit shall have certain rights and own a certain interest in the condominium property, including, without limitation the following:

(A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "D" and "E", respectively. ✓

(C) The exclusive right to the use of the limited common elements reserved for the unit, and the right to use the common elements.

(D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(E) Other appurtenances as may be provided in this Declaration and its exhibits. Each unit and its appurtenances constitutes a "condominium parcel."

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purpose for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above.

The common elements include without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.
- (F) Common elements shall specifically not include windows and doors lying within the upper or lower boundaries of a Unit. Such windows and doors serving a unit exclusively shall be considered a part of the Unit.

7.2 Easements. Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from

the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) Utility and Other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify, or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant easements or relocate any existing easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred. Also, the Association shall have perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

(B) Encroachments. If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be

intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been reserved for the use of a particular unit or units to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

(A) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit, except as otherwise provided in Section 11 below.

(B) **Others.** Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This provision includes windows, screens and doors, including all hardware and framing therefor and all electrical service and plumbing components located outside of a Unit and serving that Unit exclusively.

8.2 Exclusive Use: Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is

designated or assigned. If after all of the units have been sold the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking place may be exchanged between units or transferred to another unit as follows:

(A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.

(B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Orange County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

9. ASSOCIATION: The operation of the Condominium is by Briercliff Commons Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "D".

9.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "E", as they may be amended from time to time.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the condominium property and employ a licensed manager or management company to assist the Association in carrying out its power and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers, however, shall retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The membership of the Association shall be the

record owners of legal title to the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose fees for the use of common elements or association property. The Association has the power to enter into agreements, to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

The Association shall be responsible for the maintenance , operation and repair of the surface water or stormwater management system. Maintenance of the surface water of stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water of stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

9.7 Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them,

such power to be exercised by the Board of Directors only upon the consent of 100% of the unit owners present at a duly called meeting of the membership.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to individual unit owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

9.13 Developer Control. When unit owners other than the Developer own fifteen percent (15%) or more of the units in the condominium that will be operated ultimately by the Association, the unit owners other than the Developer shall be entitled to elect one-third (1/3) of the members of the Board of Directors of the Association. Unit owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors of the Association:

(a) Three (3) years after fifty percent (50%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;

(b) Three (3) months after ninety percent (90%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the Association

have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business;

(e) Seven (7) years after recordation of the Declaration of Condominium. The Developer is entitled to elect at least one (1) member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business, at least five percent (5%) of the units in the condominium operated by the Association.

Within seventy-five (75) days after the unit owners, other than the Developer, are entitled to elect a member or members of the Board of Directors of the Association, the Association shall call and give not less than sixty (60) days' notice of a meeting of the unit owners to elect members of the Board of Directors. The meeting may be called and the notice given by any unit owner if the Association fails to do so.

If the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

(a) Assessment of the Developer as a unit owner for capital improvements.

(b) Any action by the Association that would be detrimental to the sales of units by the Developer; however, an increase in assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of the units.

At the time that unit owners, other than the Developer, elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association, and the unit owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the unit owners and of the Association held or controlled by the Developer, including, but not limited to, items, if applicable, enumerated in F.S. 718.301(1)(a).

9.14 Developers Sales Rights. Specifically, and not by way of limitation, the Developer shall have the right to transact any business necessary to consummate sales of condominium parcels, including, but not limited to, the right to maintain models, have signs identifying the condominium property and advertising the sale of condominium parcels, have employees in the offices, models, and other common property, and use the common elements, and to show units. Sales office furnishings, the furniture and furnishings in the model apartment, signs, and items pertaining to sales shall not be considered common elements and shall remain the property of the Developer. Further, the Developer and its employees shall have the right to exclusive possession of the model apartment and Sales Office, and Developer shall further have the right for any such apartment to remain as a model until such time as all condominium parcels have been sold. In addition, the Developer reserves an easement over the roadways and all other common property in the Condominium, to enjoy the rights and privileges enumerated herein, as well as for ingress and egress for construction, sales, parking, and any other related purposes. Also, the Developer reserves an easement over the same lands over which it granted a non-exclusive easement for sanitary sewer and over the lands over which it granted an easement for drainage, both said easements being more particularly described in the legal description as more particularly described in Exhibit "A" attached hereto, so that Developer may use said sanitary sewer and drainage systems encompassed within said easement areas. Developer reserves these easements mentioned in this Paragraph, for itself its successors and assigns.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" and "special" assessments for each units share of the common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements. Assessments shall be levied and payment enforcement as provided in the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and association property, the expenses of operating the Association, and any other

expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the costs of such services shall be a common expense.

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

10.4 Liability for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below as to certain first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

Application of Payments: Failure to Pay: Interest. Assessments and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law.

Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any special assessment or installment of a regular assessment as to a unit is unpaid fifteen (15) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the units assessment for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Orange County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act, as amended from time to

time. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgement for the unpaid assessments without waiving any lien rights.

10.11 Certificate As to Assessments. Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby. The Association may charge an administrative fee to prepare the certificate.

10.12 Developer Assessments. (a) The developer shall be excused from the payment of the share of the common expenses and assessments related to those units owned by the developer for a period running subsequent to the recording of this Declaration and ending on the first day of the fourth calendar month following the month in which the closing of the sale of the first Unit occurs. During said period the developer is required to pay the portion of common expenses incurred which exceed the amount assessed against other Unit owners.

(b) Developer is excused from the payment of its share of the common expenses which would have been assessed against its units beginning with the expiration date of 10.12 (a), above, and until the turnover of control of the Association to the unit owners; and during said period of time the Developer hereby guarantees that the assessment for common expenses of the condominium assessed against the individual owners and their respective units shall not increase over a total monthly amount of \$131.31 and Developer agrees to pay any amount of common expenses incurred during that period and not produced by the assessments at said guaranteed level receivable from other unit owners.

10.13 Initial Capital Contribution. Each residential unit owner shall be required to pay, at the time of closing, a capital contribution of \$500.00.

11. MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS: Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and

improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation, the following:

(A) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.

(B) All driveways, parking areas and landscaping located on the Common Elements. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the costs shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner.

(C) The Developer has constructed a Drainage Swale and a retention/detention stormwater management system upon the site for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. The Association shall be responsible for the maintenance, operation and repair of the swale and the retention/detention stormwater management system on the site. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swale and the retention/detention stormwater management system to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or other wise obstructing the surface water flow in the swale and the retention/detention stormwater management system is prohibited. No alteration of the Drainage Swale and the retention/detention stormwater management system shall be authorized and any damage to the Drainage Swale and the retention/detention stormwater management system, whether cause by natural or human-induced phenomena, shall be repaired and the Drainage Swale and the retention/detention stormwater management system returned to its former

condition as soon as possible by the Owner(s) of the unit(s) upon which the Drainage swale and the retention/detention stormwater management system is located.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owners responsibilities include, without limitation, the following:

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance doors to the unit and its exterior and interior surface.
- (C) All other doors within or affording access to the unit, including glass doors and their mechanisms.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) serving only the unit.
- (E) Appliances, water heaters, smoke alarms and vent fans.
- (F) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively
- (G) Carpeting and other floor coverings.
- (H) Door and window hardware and locks.
- (I) Shower pans;
- (J) The main water supply shut-off valve for the unit.
- (K) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit. All interior, partition walls which do not form part of the boundary of the unit.
- (L) All drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the unit.

- (M) The rear of each unit containing a flat roof/sundeck.

11.3 Other Unit Owner Responsibilities:

(A) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(B) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

(C) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect any other part of the condominium property.

(D) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to person or property not paid by the contractor's insurance.

11.4 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the other unit owners, which approval may be denied if the other unit owners determine that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole.

Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. The owner shall not paint the exterior of the unit without the written approval of the Board of Directors, which shall be maintained by the Association. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated adverse effects on the Condominium. Unit owners may not subdivide or combine units without the consent of the other unit owners.

11.5 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the costs are a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$7500.00 in the aggregate in any calendar year without prior approval of a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

11.6 Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, the irrevocable right to enter the unit during reasonable hours, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees, including appeals and other expenses of collection, if any, attorney's fees may be assessed and due even if litigation is not commenced. Also, the St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

11.7 Negligence: Damage Caused by Condition in Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the units during reasonable hours for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall not alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

11.9 Pest Control. The Association may supply pest control services for the inside of each unit, with the costs thereof being part of the common expenses. Any owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

12. USE RESTRICTIONS: The use of the condominium property shall be in accordance with the following provisions:

12.1 Units. Each unit shall be occupied by no more than the number of occupants authorized by local zoning codes or regulations. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

12.2 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.3 Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner.

13. LEASING OF UNITS: In order to foster a stable residential community, no unit shall be leased for a period of less than seven (7) months.

14. TRANSFER OF OWNERSHIP OF UNITS. Owners shall have the right to

transfer ownership interest in their Unit without approval of the Association.

15. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 By the Unit Owner. Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

15.3 Required Coverage. The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

(A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

(B) **Flood.** In amounts deemed adequate by the Board of Directors.

(C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are

determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(D) Statutory Fidelity Bond.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners.

15.5 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association the unit owners and their mortgagees as their interests may appear. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

(A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

(B) Units. Proceeds on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units, less the deductible.

(C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except when the funds are not used for repairs or to the extent that insurance

proceeds exceed the actual costs of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

(A) **Costs of Protecting and Preserving the Property.** If a person other than the person responsible for repair and reconstruction has advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) **Cost of Reconstruction or Repair.** If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

(C) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

15.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same

shares as they received the benefits of the Association's coverage.

16.2 Damage to Common Elements-Less than "Very Substantial."

Where loss or damage occurs to the common elements, but the loss is less than "very substantial," as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the costs of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the costs of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least two-thirds (2/3rds) of the total units cannot reasonably be rendered habitable within sixty (60) days or it is impossible or structurally imprudent to repair or rebuild. Should such "very substantial" damage occur then:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

(C) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished with a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated costs thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act, If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy such assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least two-thirds (2/3rds) of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(0) above.

16.5 Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief which may include a termination of the condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 Plans and Specification. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least two-thirds (2/3ths) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the condominium is terminated after a

casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owners attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced But Habitable. If the condemnation reduces the size of a unit and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) **Restoration of Unit.** The unit shall be made habitable, if the costs of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

(B) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

(C) **Adjustment of Shares in Common Elements.** If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) **Payment of Award.** The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of

the unit, the remittance being made payable jointly to the owner and mortgagee(s).

(B) Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

(C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.

(D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

(E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state certified appraiser to participate in this process. A judgment of specific performance upon the fair market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the costs of his own appraiser.

17.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which

they own the common elements.

17.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration and, if appropriate, its Exhibits. Such amendment need be approved only by the owners of a majority of the units. Approval of or joinder by lien holders is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by written agreement of the owners of 100% of the units, joined by the holders of any mortgages on the Units.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

18.3 General Provisions. Prior to termination of the condominium or Association, the Division of Florida Land Sales, Condominiums and Mobile Homes shall be notified. A copy of the recorded termination notice certified by the clerk of the county in which the recording took place shall be submitted to the Division. Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements, and the costs of termination, as well as post-termination costs of maintaining the former condominium property, shall be common expenses, the payment of which shall be secured by a lien on the interest owned by each tenant in common. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts Affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Orange County, Florida.

18.4 New Condominium. The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Partition: Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least one hundred (100%) of the voting interests agree to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonable required to effect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The termination of the Condominium does not, by itself terminate the Association. The members of the last Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

19. ENFORCEMENT:

19.1 Duty to Comply: Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or for injunctive relief or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act, the condominium documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees, including costs and reasonable attorneys' fees upon appeal.

19.4 Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under the law and the condominium documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

20. RIGHTS OF MORTGAGEES:

20.1 Approvals. Written consent (which may not be unreasonably withheld) of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements,, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 First Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20.6 Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

21. AMENDMENT OF DECLARATION. Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by the owners of at least one of the units.

21.2 Procedure. Upon any amendment or amendments to this Declaration

being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by a majority of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

21.4 Certificate: Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the association. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Orange County, Florida.

21.5 Proviso. No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17, nor to mergers. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners. Any amendment to the Declaration which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

21.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the association through amendment of Exhibits "B" and "C" to the original Declaration. The amendment must be approved by at least one hundred percent (100%) of the total voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to

the units.

21.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act,

21.8 Developer Amendment Rights. The Developer reserves the right, as set forth in FS 718.301, to amend this Declaration of Condominium and any of its covenants, restrictions, reservations, conditions, or easements until ONE HUNDRED PERCENT (100%) of the Units have been sold and titled out to individual purchasers, unless doing so would be a violation of the Condominium Act; and further, except that the Developer, or if said Corporation has been legally dissolved, then any one of its last stockholders of record, or a member of the last Board of Directors, their administrators or assigns must approve in writing any modification or amendment of this Declaration of Condominium or any of its exhibits, until ONE HUNDRED PERCENT (100%) of the units are sold and titled out to individual purchasers. Notwithstanding anything contained herein to the contrary, no material amendment (as set forth in FS 718.110(11)) to the Declaration shall be valid without the consent (which may not be unreasonable withheld) of People's First Community Bank, as long as People's First Community Bank holds a mortgage interest on the land subject to this Declaration.

22. MISCELLANEOUS:

22.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not effect the remaining portions.

22.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act , as it may be amended from time to time.

22.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

22.4 Exhibits. All Exhibits attached hereto are incorporated herein as if

fully set forth in this Declaration.

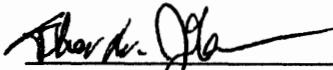
22.5 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

22.6 Headings. The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

In Witness Whereof, the Developer has caused this Declaration of Condominium to be executed this 23 day of JAN, 2002

WITNESSES:

SJK. Blue Star Holdings, Inc.



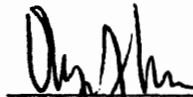
(Print Name): Thomas M. Johnson

By:


Mark L. Kinchla, President

1131 Delaney Ave.

Orlando, FL 32806



(Print Name): Alfred

Dated:

1-23-02

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING instrument was acknowledged before me this 23 day of JAN, 2002 by Mark L. Kinchla, President of SJK. Blue Star Holdings, Inc., who is personally known to me or produced identification (type of identification produced) _____.


Printed Name:

Notary Public - State of Florida

My Commission Expires:

Commission No.:



OR Bk **6456** Pg **4908**
Orange Co FL **2002-0078460**

EXHIBIT "A"

Lot 3, DELANEY-BRIERCLIFF PLANNED DEVELOPMENT, according to the plat thereof, as recorded in Plat Book 41, pages 60 and 61, of the Public Records of Orange County, Florida.



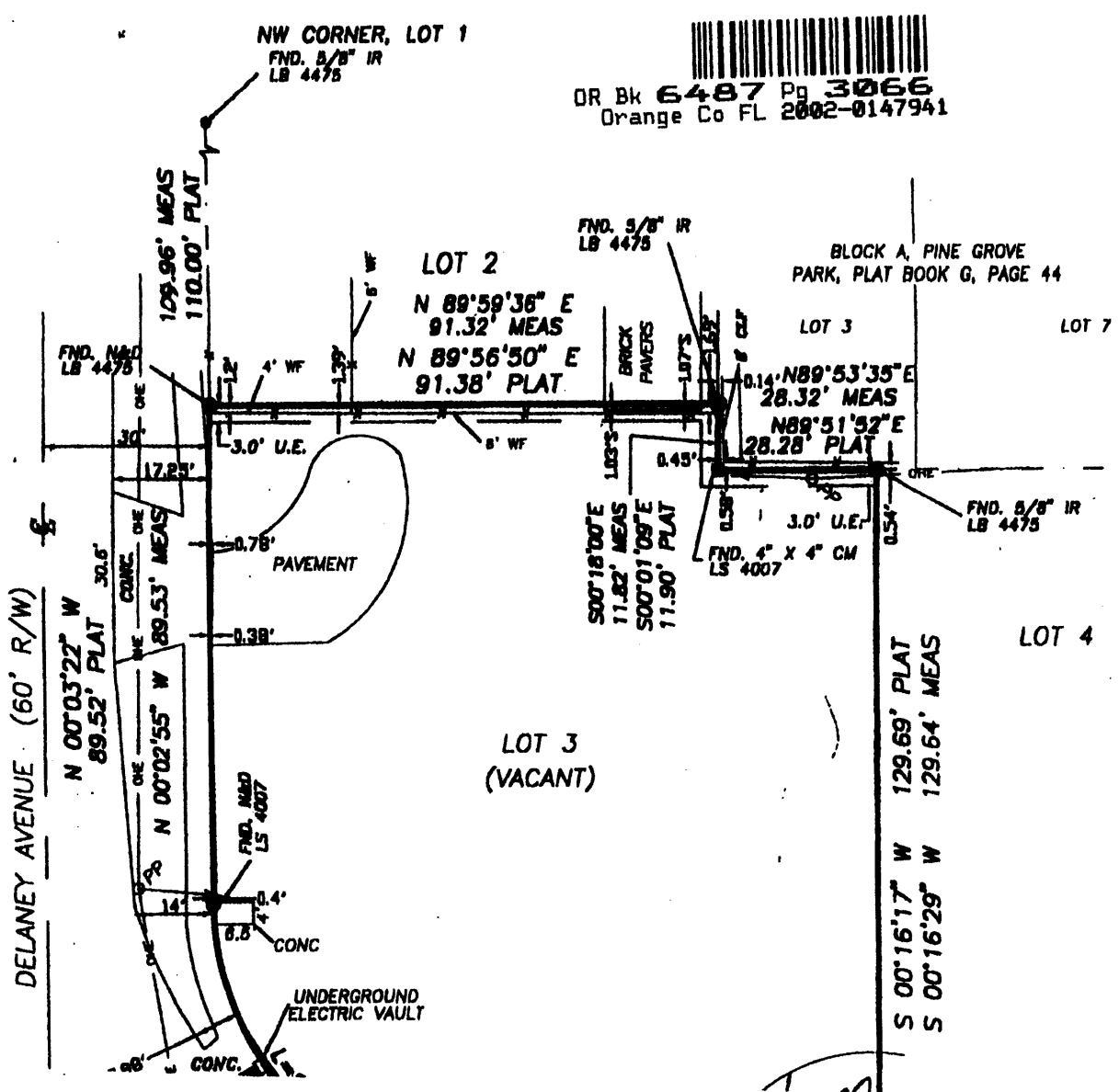
OR Bk **6487** Pg **3065**
Orange Co FL **2002-0147941**

Exhibit "B" - Survey

PLAT OF SURVEY
DESCRIPTION

DR Bk 6456 Pg 4909
Orange Co FL 2002-0078460

LOT 3, DELANEY-BRIERCLIFF PLANNED DEVELOPMENT AS RECORDED IN PLAT BOOK 41, PAGES 60 AND 61, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.



DR Bk 6487 Pg 3066
Orange Co FL 2002-0147941



EXHIBIT "D"

ARTICLES OF INCORPORATION

OF

BRIERCLIFF COMMONS CONDOMINIUM ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, these Articles of Incorporation are adopted by Briercliff Commons Condominium Association, Inc., a Florida Corporation of Orange County, Florida, for the purposes set forth below.

ARTICLE I

NAME: The name of the corporation is the Briercliff Commons Condominium Association, Inc., hereafter referred to as the "Association."

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Briercliff Commons Condominium, located in Orange County, Florida. The Association is organized and shall exist upon a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or Officer of the Association. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit except as limited or modified by these Articles, the Declaration of Condominium or Chapter 718, Florida Statutes, as it may hereafter be amended, including, but not limited to, the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.

- (D) To reconstruct improvements after casualty and to make further improvements of the property.
- (E) To make, amend and enforce reasonable rules and regulation governing the use of the common elements and the operation of the Association.
- (F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, as provided by the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, and the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the Condominium and the condominium property to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To enter into agreements, or acquire leaseholds, memberships, and other possessory use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has the power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (K) To borrow or raise money for any of the purposes of the Association, and from time to time without limit as to amount; to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable instruments and evidences of indebtedness; and to secure the payment of any thereof, and of the interest thereon, any mortgage, pledge, conveyance of assignment in trust, of the whole or any part of the rights or property of the Association, whether at the time owned or thereafter acquired.
- (L) To operate, maintain and manage the surface water or stormwater management

system(s) in a manner consistent with the St. Johns River Water Management District permit no.42-095-6300-Z requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or stormwater management system.

The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE III

MEMBERSHIP:

- (A) The members of the Association shall consist of all records owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws. After termination of the Condominium, the members shall consist of those who are members at the time of such termination.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to the number of votes in Association matters as set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors need not be members of the Association.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association and they shall serve at the pleasure of the Board.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by petition of the owners of one-fourth (1/4) of the units by instrument, in writing, signed by them.
- (B) Procedure. Upon any amendment or amendments to these Articles being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise required for by Florida law, these Articles of Incorporation may be amended by vote of a majority of the voting interests at any annual or special meeting, or by approval in writing of a majority of the voting interest without a meeting, provided the notice of any proposed amendment has been given to the members of the Association, and that the notice contains a fair statement of the proposed amendment.

- (D) **Effective Date.** An amendment shall become effective upon filing with the Secretary of State and recording a copy in the Public Records of Orange County, Florida.

ARTICLE VIII

REGISTERED AGENT AND PRINCIPAL OFFICE AND ADDRESS:

The registered office of the Association shall be at:

33 N. Summerlin Avenue, Orlando, FL 32801

The registered agent at said address shall be:

The incorporator is:

Mark Kinchla
1131 Delaney Avenue
Orlando, FL 32806

ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interest of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal

benefit.

- (D) Wrongful conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

ARTICLE X

DISSOLUTION: In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

Wherefore, these Articles of Incorporation were duly adopted by the membership of the Briercliff Commons Condominium Association, Inc. by the method prescribed in the Association's governing documents on the _____ day of _____, 2001.

The undersigned hereby accepts designation as registered agent.

**BRIERCLIFF COMMONS
CONDOMINIUM ASSOCIATION, INC.**

By: _____
Mark Kinchla, President/Registered Agent

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING instrument was acknowledged before me this ____ day of _____, 2001 by **Mark Kinchla**, who is personally known to me or produced identification (type of identification produced) _____.

Printed Name:



OR Bk **6487** Pg **3074**
Orange Co FL **2002-0147941**

Notary Public - State of Florida
My Commission Expires:
Commission No.:

OR Bk **6456** Pg **4917**
Orange Co FL **2002-0078460**

EXHIBIT "E"

BYLAWS

OF

BRIERCLIFF COMMONS CONDOMINIUM ASSOCIATION, INC.

1. **GENERAL.** These are the Bylaws of Briercliff Commons Condominium Association, Inc., hereinafter the "Association," a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act.
 - 1.1 **Principal Office.** The principal office of the Association shall be at the Condominium or at such other place in Orange County, Florida, as the Board of Directors may determine.
 - 1.2 **Seal.** The seal of the Association shall be inscribed with the name of Association, the year of its incorporation, and the word "Florida" and "Corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.
 - 1.3 **Definitions.** The terms used herein shall have the same definitions as stated in the Declaration of Condominium to which these Bylaws are attached as an Exhibit.
2. **MEMBERS.**
 - 2.1 **Qualification.** The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit solely for the purposes of determining voting and use rights. Membership shall become effective upon the recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.
 - 2.2 **Voting Rights: Voting Interest.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of votes ("voting interest") is equal to the total number of units. The vote of a unit is not divisible. The right of vote may not be denied because of delinquent

assessments. If a condominium unit is owned by one natural person, his right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more natural persons who are not acting as trustees, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted.

2.3 **Approval of Disapproval of Matters.** Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

2.4 **Change of Membership.** A change of membership in the Association shall be established by the new member's membership becoming effective as provided in Section 2.1 above and the membership of the prior owner shall thereby be automatically terminated.

2.5 **Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

3. **MEMBERS' MEETINGS; VOTING.**

3.1 **Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Orange County, Florida, at a place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting, all ballots cast in the annual election of Directors shall be counted and results announced.

3.2 **Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least ten percent (10%) of the votes of the entire membership. Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members

making the request. Business at any special meeting shall be limited to the items specified in the request and contained in the notice of meeting.

- 3.3 **Notice of Meetings.** Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered and be posted in a conspicuous place on the condominium property at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.
- 3.4 **Notice of Annual Meeting; Special Requirements.** Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda of the annual meeting shall be sent by first class mail to each owner at least fourteen (14) days prior to the annual meeting, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may be delivered in person if a written waiver is obtained.
- 3.5 **Quorum.** A quorum at a member's meeting shall be obtained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership.
- 3.6 **Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is required by law or by any provision of the condominium documents.
- 3.7 **Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his vote by proxy. Proxies may not be used to elect Directors. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by

any person entitled to vote, but shall be valid only for the specified meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it is given. Holders of proxies need not be members of the Association. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if they proxy so provides, to substitute another person to hold the proxy.

- 3.8 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally schedules may instead be conducted at the continuance.
- 3.9 **Order of Business.** The order of business at members' meetings shall be substantially as follows:
- (A) Counting of ballots in election of Directors (if necessary);
 - (B) Call of the roll or determination of quorum;
 - (C) Reading or disposal of the minutes of the last members' meeting;
 - (D) Reports of the Officers;
 - (E) Reports of Committees;
 - (F) Unfinished Business;
 - (G) New Business;
 - (H) Adjournment.
- 3.10 **Minutes.** Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives and Board Members at all reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.
- 3.11 **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall guide the conduct of the Association's meetings.
- 3.12 **Action By Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed

and returned by members having not less than the minimum number of written expressions of approval are received by the Secretary within thirty (30) days of mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 **Number and Terms of Service.** The Board of Directors shall consist of three (3) members. Each Director shall be elected for a 1 year term. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in Section 4.5 below, or in the case of a vacancy, as provided in 4.4 below. Unit owners cannot recall directors appointed by the developer.

4.2 **Qualifications.** Each Director need not be a member of the Association.

4.3 **Annual Elections.** On the day of each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided by law. Not less than sixty (60) days before the election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery included regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days prior to the annual election. If the number of candidates exceeds the number of Directors to be elected, the Association shall mail or deliver a second notice

of election to all unit owners entitled to vote therein, together with a ballot which shall list all qualified candidates. Upon timely request of candidate, the Association shall include an information sheet (no larger than 8-1/2 inches by 11 inches furnished by the candidate) with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association. Where balloting is required, Directors shall be elected by a plurality of the votes cast in the election, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each unit shall cast as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any one candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes may be broken by agreement among the tied candidates, or by lot.

4.4 Vacancies on the Board. Except as otherwise provided by law for the filling of vacancies during the time when the Developer is entitled to appoint at least one Director, if the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follow:

- (A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though not less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term.
- (B) If a vacancy occurs as a result of a recall and less than a majority of the directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled in accordance with the procedural rules to be adopted by the Division, governing the method of selecting successors, and providing for the operation of the Association during the period of recall but prior to the designation of successor Directors sufficient to constitute a quorum.

4.5 Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose

of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the meeting. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that the notice of the meeting is given. Notwithstanding this provision, no director appointed by the developer may be removed.

- 4.6 **Other Meetings.** Meetings of the Board may be held at such time and place in Orange County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

48 hr.
notice
to owners

- 4.7 **Notice to Owners.** All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment or a rule restricting the use of units is to be considered for any reason shall be mailed to each owner at least (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Section 6.2, below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

- 4.8 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

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- 4.9 **Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons only when the participation of Directors by telephone is necessary to establish a quorum. Participation by such means shall be deemed equivalent to presence in person. Directors may not vote or participate by proxy or secret ballot at Board meetings, except that officers may be elected by secret ballot.

- 4.10 **Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.
- 4.11 **Adjourned Meetings.** The Majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, if a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.
- 4.12 **The Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by a majority vote of the Directors present.
- 4.13 **Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their duties.
- 4.14 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee.

5. **OFFICERS.**

- 5.1 **Officers and Elections.** The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by a majority of the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such

other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

- 5.2 **President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.
- 5.3 **Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.
- 5.4 **Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.
- 5.5 **Treasurer.** The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the

Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

6. **FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

6.1 **Depository.** The Association shall maintain its funds in insured accounts or investments with such institutions doing business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board.

6.2 **Budget.** The Board of Directors shall adopt a budget of common expenses in advance for each fiscal year. A copy of the proposed budget and a notice stating the time, date, and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the owner of each unit not less than fourteen (14) day prior to that meeting. The proposed budget shall be detailed and shall show the amount budgeted by income and expense classifications.

6.3 **Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon dividing the estimated replacement cost by the estimated remaining useful life of each item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2, above. Reserves funded under this paragraph, and any interest thereon, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present and voting at a members' meeting called for the purpose.

6.4 **Other Reserves.** In addition to the statutory reserves provided in Section 6.3

above, if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

- 6.5 **Assessments.** Regular annual assessments based on the adopted budget shall be paid as established by the Board of Directors.
- 6.6 **Special Assessments.** Special assessments may be imposed by the Board when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interest first consents. The notice of any Board meeting at which a special assessment will be considered, discussed or proposed shall be given as provided in Section 4.8 above and the notice of assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.
- 6.7 **Fidelity Bonds.** The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse association funds, which policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or management agent at any one time. The premiums on such bonds shall be a common expense.
- 6.8 **Audits.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interest, or by a majority of the Board of Directors, shall be made by a certified public account, and a copy of the audit report shall be available to all members.
- 6.9 **Financial Statements.** Not later than ninety (90) day after the close of each fiscal year, the Board shall prepare, and shall distribute to the owners of each unit, financial statements meeting the minimum standards of Section 718.111(13) or Section 718.111(14), of the Condominium Act (whichever is applicable), showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts.

6.10 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year.

7. **RULES AND REGULATIONS.** The Board of Directors may, by Board action, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Such rules and regulations need not be adopted by the membership or recorded in the Public Records, however, copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of the health, happiness and peace of mind of the unit owners and uniformly applied and enforced. The previous rules and regulations, if any, adopted by the Association prior to the effective date of this Declaration shall remain in full force and effect until such time as the Board adopts new rules and regulations pursuant to the authority of this Section 7.
8. **COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in Section 19 of the Declaration of Condominium, the Association and each Unit Owner shall have any and all remedies available by law, including those remedies set forth in the Condominium Act.
9. **AMENDMENT OF BYLAWS.** These Bylaws are amendable by the Developer in the same manner as the developer may amend the Declaration. Except for amendments by the developer, amendments to these Bylaws may be proposed and adopted in the following manner:
 - 9.1 **Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition to the Board signed by at least one-fourth (1/4) of the voting interests.
 - 9.2 **Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.
 - 9.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, these Bylaws may be amended by concurrence of a majority of the voting interest present in person or by proxy at any annual or special meeting called for the purpose, provided that notice



of any proposed amendment has been given to the members in accordance with law.

- 9.4 **Recording: Effective Date.** A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Public Records of Orange County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium is recorded.

10. **MISCELLANEOUS.**

- 10.1 **Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.
- 10.2 **Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.
- 10.3 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

THIS IS TO CERTIFY that the foregoing was duly adopted as the Bylaws of BRIERCLIFF COMMONS Condominium Associations, Inc., a Florida corporation not for profit, at the first meeting of the Board of Directors held on _____, 2002.

Briercliff Commons Condominium
Association, Inc.

By: _____
President

ATTEST: _____
Secretary

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING instrument was acknowledged before me this _____ day of _____, 2002 by _____ and _____, President and Secretary, respectively, of Briercliff Commons Condominium Association, Inc., a Florida corporation not for profit, on behalf of the corporation, who are personally known to me or produced identification (type of identification produced) _____

Printed Name:
Notary Public - State of Florida
My Commission Expires:
Commission No.: